

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TUNDE ADEYI,

Petitioner,

-against-

UNITED STATES OF AMERICA

Respondent.  
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06 CV 1454 (ARR)

NOT FOR ELECTRONIC  
OR PRINT  
PUBLICATION

ORDER

ROSS, United States District Judge:

On March 22, 2006, petitioner Tunde Adeyi, proceeding pro se, filed a motion with the court, indicating his intent to file a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 and requesting the appointment of counsel. The court construed the motion and its accompanying exhibits as a § 2255 petition and issued an order to show cause to the government on May 5, 2006. In the same order, the court denied petitioner's request for counsel without prejudice to renewal after briefing is complete. In lieu of responding the court's order, the government filed a letter indicating that petitioner may not have filed a § 2255 petition and, thus, the court should seek his consent to treat his motion as a § 2255 petition. Given the government's concerns and the potential ambiguity of petitioner's motion, the court withdraws its order to show cause construing petitioner's motion as a § 2255 petition.

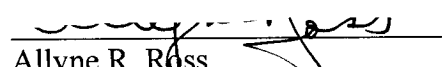
Before the court may construe a motion under a different heading as a § 2255 motion, the petitioner must be informed of the consequences thereof. In particular, the petitioner must be made aware of the "stringent limits on a prisoner's ability to bring a second or successive application for

a writ of habeas corpus. Second or successive applications may be heard only if they involve newly discovered evidence of a potentially dispositive nature, or a new and retroactive rule of constitutional law.” Adams v. United States, 155 F.3d 582, 583 (2d Cir. 1998).

In light of the bar on successive petitions, “district courts should not recharacterize a motion purportedly made under some other rule as a motion made under § 2255 unless (a) the movant, with knowledge of the potential adverse consequences of such recharacterization, agrees to have the motion so recharacterized, or (b) the court finds that, notwithstanding its designation, the motion should be considered as made under § 2255 because of the nature of the relief sought, and offers the movant the opportunity to withdraw the motion rather than have it so recharacterized.” Id. at 584.

Accordingly, by June 16, 2006, Mr. Adeyi shall inform the court in writing if it is indeed his intention that the instant motion be characterized as made under 28 U.S.C. § 2255. If Mr. Adeyi fails to do so, the court will construe the motion as a motion to vacate, amend, or modify a sentence pursuant to 28 U.S.C. § 2255, and petitioner may be barred from bringing future motions under this provision.

SO ORDERED.

  
Allyne R. Ross  
United States District Judge

Dated: Brooklyn, New York  
June 6, 2006

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